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Supreme Court, U.S.  
FILED

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JOSEPH F. SPANIOLO, JR.,  
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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1986

\_\_\_\_\_  
NO.

\_\_\_\_\_  
PATRICK T. ROGERS,

Petitioner

- vs -

STATE OF CONNECTICUT,

Respondent.

\_\_\_\_\_  
PETITION FOR A WRIT OF CERTIORARI TO  
THE APPELLATE COURT OF THE  
STATE OF CONNECTICUT  
\_\_\_\_\_

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### QUESTION PRESENTED

1. Did the Connecticut Appellate Court in ruling that the State did not violate Petitioner's Fifth and Fourteenth Amendment rights by presenting evidence during its direct case, again on cross-examination of the Petitioner during his case, and yet again as its rebuttal case, concerning Petitioner's post-Miranda request for the assistance of counsel, and in further ruling that by responding to such evidence during presentation of the defense case Petitioner had waived his constitutional objections to the State's actions, so completely ignore the prior holdings of this Court that certiorari should be granted to compel State court obedience to the dictates of the United States Constitution?

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THE CONNECTICUT APPELLATE COURT  
IN RULING THAT THE STATE DID NOT  
VIOLATE PETITIONER'S FIFTH AND  
FOURTEENTH AMENDMENT RIGHTS BY  
PRESENTING EVIDENCE DURING ITS  
DIRECT CASE, AGAIN ON CROSS-  
EXAMINATION OF THE PETITIONER  
DURING HIS CASE, AND YET AGAIN  
AS ITS REBUTTAL CASE, CONCERN-  
ING PETITIONER'S POST-MIRANDA  
REQUEST FOR THE ASSISTANCE OF  
COUNSEL, AND IN FURTHER RULING  
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DENCE DURING PRESENTATION OF  
THE DEFENSE CASE PETITIONER HAD  
WAIVED HIS CONSTITUTIONAL OBJEC-  
TIONS TO THE STATE'S ACTIONS,  
SO COMPLETELY IGNORE THE PRIOR  
HOLDINGS OF THIS COURT THAT  
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### QUESTION PRESENTED

1. Did the Connecticut Appellate Court in ruling that the State did not violate Petitioner's Fifth and Fourteenth Amendment rights by presenting evidence during its direct case, again on cross-examination of the Petitioner during his case, and yet again as its rebuttal case, concerning Petitioner's post-Miranda request for the assistance of counsel, and in further ruling that by responding to such evidence during presentation of the defense case Petitioner had waived his constitutional objections to the State's actions, so completely ignore the prior holdings of this Court that certiorari should be granted to compel State court obedience to the dictates of the United States Constitution?

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PETITION FOR A WRIT OF CERTIORARI TO  
THE APPELLATE COURT OF THE  
STATE OF CONNECTICUT

The Petitioner, PATRICK T. ROGERS,  
respectfully prays that a writ of  
certiorari be issued to review the judgment  
and opinion of the Appellate Court of the  
State of Connecticut entered in this pro-  
ceeding on December 2, 1986.

OPINION BELOW

The opinion of the Appellate Court of the State of Connecticut is reported at 9 Conn. App. 208 (1986), and appears in the Appendix hereto.



JURISDICTION

The opinion of the Appellate court of the State of Connecticut was entered on December 2, 1986. A timely petition for review of the Appellate Court decision by the Supreme Court of the State of Connecticut was denied on February 10, 1987. This petition for certiorari has been filed within 60 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

1. Did the Connecticut Appellate Court in ruling that the State did not violate Petitioner's Fifth and Fourteenth Amendment rights by presenting evidence during its direct case, again on cross-examination of the Petitioner during his case, and yet again as its rebuttal case, concerning Petitioner's post-Miranda request for the assistance of counsel, and in further ruling that by responding to such evidence during presentation of the defense case Petitioner had waived his constitutional objections to the State's actions, so completely ignore the prior holdings of this Court that certiorari should be granted to compel State court obedience to the dictates of the United States Constitution?

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Amendment V:

No person...shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law....

U.S. Constitution, Amendment XIV:

...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner was convicted at a trial in the Connecticut Superior Court of the crime of sexual assault in the first degree. It was undisputed that Petitioner and the alleged victim had engaged in consensual sexual relations on several prior occasions. Petitioner's defense was consent. Trial was essentially a contest between the comparative credibility of Petitioner and the alleged victim.

During its direct case, the prosecution presented testimony that after Petitioner had been arrested in this case and read his Miranda rights, he had admitted to the police that he and the alleged victim had engaged in sexual relations on the night in question but had asserted that the sex was voluntary on her part; and that having so

stated Petitioner then terminated questioning by requesting a lawyer. On cross-examination of Petitioner during presentation of the defense, the State again elicited evidence that Petitioner had terminated police interrogation by requesting the assistance of an attorney. Finally, during its rebuttal case, the State again called the arresting officer to the stand and again elicited from him the fact that Petitioner had terminated interrogation by requesting an attorney and that the police had thereupon ceased questioning although they had other questions they wished to ask.

During presentation of the direct prosecution case, the arresting officer testified specifically that he had questioned Petitioner only after reading him

his Miranda rights. He testified that after Petitioner had admitted engaging in voluntary sex with the alleged victim, the officer advised Petitioner that he was facing a charge of rape. The prosecution then specifically elicited from the arresting officer the fact that the defendant, having been so advised, stated: "I don't want to talk to you anymore. I want a lawyer." The prosecutor then emphasized this point by again asking the arresting officer whether the questioning had ended at the request of Petitioner. The officer responded that it had. (Tr. pp. 253-57)

Petitioner testified on his own behalf. On cross-examination the prosecutor asked him the following questions: "Isn't it true that after all of these questions were asked, you gave the answers, you then said,

'I don't want to answer anymore questions, please contact my lawyer'?" (Tr. p. 320)

"Again, let's see if it helps refresh your recollection whether or not you said, 'I don't want to answer anymore questions.' You want to contact a lawyer." (Ibid.)

"When you were being interviewed...you repeatedly were telling him,...you didn't want to talk." (Tr. p. 328) "Even though you were in a state of confusion, you had enough presence of mind to ask for an attorney?" (Tr. p. 329)

The State again called the arresting officer as its rebuttal witness and asked this officer the following questions: "You had previously testified concerning the interview you had with Mr. Rogers at the Milford Police Department. And you indicated, at one point, that the inter-

view was concluded, is that correct?"

"Would you indicate to the members of the jury the circumstances under which you concluded the interview?" "Did you continue to ask him any other questions after he made that statement to you?" "But there were other questions you wanted to ask?" (12/16/83 Tr. pp. 16-17)

As to all of this, the Connecticut Appellate Court held that there was no constitutional violation. 9 Conn. App. at 217. The Court went on to observe that the defense attorney had not objected to these lines of inquiry at trial and had questioned the defendant during presentation of the defense case about his reasons for declining to continue the interrogation. The Court held: "Any constitutional objection...therefore, has been waived." 9



Conn. App. at 217-18.

REASONS FOR GRANTING THE WRIT

THE CONNECTICUT APPELLATE COURT IN RULING THAT THE STATE DID NOT VIOLATE PETITIONER'S FIFTH AND FOURTEENTH AMENDMENT RIGHTS BY PRESENTING EVIDENCE DURING ITS DIRECT CASE, AGAIN ON CROSS-EXAMINATION OF THE PETITIONER DURING HIS CASE, AND YET AGAIN AS ITS REBUTTAL CASE, CONCERNING PETITIONER'S POST-MIRANDA REQUEST FOR THE ASSISTANCE OF COUNSEL, AND IN FURTHER RULING THAT BY RESPONDING TO SUCH EVIDENCE DURING PRESENTATION OF THE DEFENSE CASE PETITIONER HAD WAIVED HIS CONSTITUTIONAL OBJECTIONS TO THE STATE'S ACTIONS, SO COMPLETELY IGNORE THE PRIOR HOLDINGS OF THIS COURT THAT CERTIORARI SHOULD BE GRANTED TO COMPEL STATE COURT OBEDIENCE TO THE DICTATES OF THE UNITED STATES CONSTITUTION.

This case presents an extreme example of the refusal of State Appellate Courts to follow the constitutional dictates of this Court. It would be difficult to imagine a more extreme or blatant violation of the

rule in Doyle v. Ohio, 426 U.S. 610 (1976), most recently restated in Wainwright v. Greenfield, \_\_\_ U.S. \_\_\_, 106 S.Ct. 634 (1986).

The Connecticut Appellate Court attempted to evade its constitutional responsibility by finding that the evidence presented by the prosecutor in this manner was simply part of a straightforward narrative of Petitioner's conversation with the police. Were this the case, surely it would not have been necessary to ask about it twice during presentation of the State's case-in-chief; nor to have cross-examined Petitioner about it on four separate occasions; nor to have presented additional evidence on the same topic as the only rebuttal evidence offered during the trial.

Petitioner in this case was originally charged with five separate crimes, all upon the basis of the testimony of the one alleged victim. Significantly, the jury acquitted him of four of the five counts. Clearly the prosecution case was considered marginal at best by this jury. Had the prosecution been limited to presentation of constitutionally-acceptable evidence, it seems probable that Petitioner would have been acquitted of the rape charge as well.

Finally, in holding that the presentation of responsive evidence during the defense case constitutes a waiver of the constitutional violation, the Appellate Court clearly ignored the fundamental rule that presumes constitutional rights are not waived. Johnson v. Zerbst, 304 U.S. 458 (1938).

CONCLUSION

For the above reasons, a writ of certiorari should issue to review the judgment and opinion of the Appellate Court of the State of Connecticut, to bring this Court into compliance with the dictates of the Fifth and Fourteenth Amendments.

Respectfully submitted:

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